



IN THE COURT OF 2ND JOINT CIVIL JUDGE JUNIOR DIVISION,
TASGAON

Regular Civil Suit No. 25/2021.
CNR- MHSN090000892021.

Shri Prashant Sampatrao Gavade

... Plaintiff.

V/s.

Dhanaji Rangrao Yadav

... Defendant.

Learned Advocate Mr. S.S.Adsul for the plaintiff.

Learned Advocate Mr. R.B.Satpute & Smt. V.V.Jambhale for defendant.

ORDER BELOW EXH.5

This is an application filed by the plaintiff under order XXXIX rule 1 and 2 of Code of Civil Procedure, 1908 for temporary injunction restraining the defendant from disturbing peaceful possession of plaintiff and the construction in the suit property. It is also prayed that defendant may be restrained from flowing drainage water towards the western side of the suit property from his property i.e. city survey no.80.

2] The plaintiff has come with a case that city survey no. 74 and 80 are adjacent to each other. He is owner of city survey no.74 and defendant is owner of city survey no.80. The city survey no.80 of

the defendant is situated towards northern side of city survey no.74. The city survey no.74 which is more particularly described in para 1A of the plaint is suit property.

3] Further it is contended that the suit property is purchased by the plaintiff from Namdeo Pandu Gavade vide registered sale deed dated 8/5/2014. The city survey no.80 is also purchased by defendant from Namdeo Pandu Gavade vide registered sale deed. In the backdrop of these circumstances, defendant started construction in his property in the month of July 2011 by making encroachment over the suit property. At that time, Namdeo Pandu Gavade raised objection about the construction of the defendant and filed Regular Civil Suit No. 103/2011 wherein, court commissioner was appointed and it was proved that defendant had made encroachment over the suit property. Therefore, defendant filed pursis and removed the construction from the encroached portion. Consequently, the dispute in between defendant and predecessor of plaintiff was settled. Thereafter, defendant again kept a door towards southern side which is opening in the suit property. At that time, again defendant gave assurance that he will keep the said door closed permanently. Now, the defendant has again started the construction of first floor wherein he has opened gallery towards the southern side which is not at all permissible to defendant. The defendant has no right to keep any open space or gallery or even door towards the southern side. Moreover, defendant is also flowing the drainage water in the suit property, due to which the plaintiff is unable to make any construction in the suit property. On the said count, plaintiff tried to give understanding to defendant however, defendant didn't pay any heed. Apart from it, plaintiff also filed complaint application to the Local Authority. However, defendant

didn't respond to the same. Therefore, the plaintiff is constrained to file present suit along with this application.

4] Defendant is served with suit summons. He appeared through his advocate and filed his written statement and say below Exh.21. He has strongly resisted the application on the ground that plaintiff has not produced all the documents on the basis of which he has filed present suit. Further he has contended that, defendant has purchased his property city survey no.80 and he is enjoying the possession over his property as per the settled possession of his predecessor. Further it is contended that plaintiff has filed present suit only with intention to stop the use of lane towards the eastern side of his property. It is also contended that the defendant has completed the construction in his property at the time of decision of earlier suit i.e. RCS No.103/2011 as per the directions of the Court therefore, there is no question of encroachment or to create any disturbance to the construction of the plaintiff in the suit property. On the contrary, the earlier suit bearing RCS No.103/2011 is dismissed by this Court on merit on 29.03.2014. Therefore, since then there was no dispute about the possession of defendant over city survey no.80. In such circumstances, now the plaintiff is not entitled to claim similar relief against the defendant. Further it is contended that the defendant has left the gallery towards the eastern side of city survey no.80 adjacent to city survey no.75 to use light and water. Apart from it, the door left towards eastern side is kept for using the lane towards the southern side of his property. Therefore, the plaintiff is not at all concerned with the gallery or the door of the defendant. Further the defendant has totally denied that he is flowing the drainage water in the suit property. Lastly, it is contended that the plaintiff is an

advocate by profession and he was representing his predecessor in the earlier suit bearing RCS No.103/2011. As the suit is dismissed in favour of defendant, the plaintiff being annoyed with the defendant has filed present suit only to harass the defendant. Therefore, the plaintiff has no right to claim any relief. Hence, the application is devoid of merit and it is prayed for rejection of application.

5] Heard the learned advocates for both the parties at length.

6] The points arises for determination along with findings and reasons thereon are as under.

SR.No	POINTS	FINDINGS
1.	Whether the plaintiff have made out prima-facie case?	In the negative.
2.	Whether the balance of convenience lies in favour of plaintiff ?	In the negative.
3.	To whom irreparable loss will be caused?	To defendant.
4.	What order?	The application is rejected.

REASONS

As to Point No.1 to 3:-

7] Considering facts and circumstances of the case all points are taken together for its convenient discussion

8] It is settled law that granting or refusing to grant interim injunction is covered by three well established principles, viz., (1)

Whether the applicant has made out prima-facie case; (2) Whether balance of convenience is in his/her favour and (3) Whether the applicant will suffer irreparable loss and/or injury if temporary injunction is refused. Interim relief are granted on the basis of case made out in the pleadings finding that in the interest of justice interim order is necessary in order to prevent the abuse of process of law or to prevent wastage or to maintain the situation as on date or from recurrence of certain instances which were existing as on the date of presenting such application. The Court has also to take into consideration the balance of convenience and whether the applicant would suffer any irreparable loss if no injunction is granted. The party who seeks the aid of the Court for injunction must show that the act complained of is in violation of his right or whether there is a fair and substantial question to be decided between the parties and that there is a bonafide dispute between the parties.

9] Keeping in mind the aforesaid settled legal position, I have considered the pleadings and documentary evidence on record with the assistance of the learned advocates for both the parties. The fate of this application is revolving around the judgement and decree by this Court in the earlier suit bearing RCS No.103/2011. Admittedly, present plaintiff is an advocate by profession practising in this Court. He was representing advocate on record for the plaintiff Namdeo Pandu Gavade in the earlier suit bearing RCS No.103/2011. Moreover, it is also not disputed that Namdeo Pandu Gavade is predecessor of plaintiff in the suit property. In the backdrop of these circumstances, the earlier suit is dismissed on 29.03.2014 and present plaintiff has purchased the suit property on 08.05.2014. It clearly shows that present plaintiff being an advocate on record on behalf of plaintiff in

earlier and also being the purchaser of the suit property was well aware about the earlier suit and the dispute in between his predecessor and present defendant. I have perused the copy of judgment and Decree passed in RCS No.103/2011. It is pertinent to note here that the earlier suit was filed for injunction wherein similar dispute was raised by the predecessor of present plaintiff. It is pertinent to note here that the reasoning of this Court in the said judgment as to issue No.3 in para No.13 of its judgement makes clear that predecessor of plaintiff has made dispute about fixation of door towards the south side facing towards the suit property as well as draining of waist and drainage water in the suit property by defendant. It means, the alleged construction of the defendant is long back ago and it was well within knowledge of the plaintiff. Now, in present suit the plaintiff has again made similar dispute alongwith dispute about the open space kept for gallery on first floor. However, it is pertinent to note here that, plaintiff had purchased the suit property soon after the judgement in the earlier suit. Despite of it, he or his predecessor didn't challenge the said judgment and decree of earlier suit till today i.e. for almost seven years. Present suit is filed after lapse of seven years of purchasing the property by the plaintiff. Also there is no whisper in the plaint as to why predecessor of the plaintiff didn't challenge the decree or even the plaintiff didn't raise any dispute since last seven years. It is also not a case of the plaintiff that he was not aware about the earlier suit or the dispute in between his predecessor and defendant. Therefore, once the plaintiff failed to take action, it clearly shows that plaintiff was agree with what was being done by defendant was proper and he had no grievance about it. It is well settled position of law that, the one who seeks aid of the

court for equitable relief must show the act of defendant is violating his right which is causing extreme hardship to him. And the person who slept over his own right is not entitled for any kind of equitable relief. To that effect, I would like to rely on the ratio laid down in the case of *Therakan D. Joseph V/s. Dolphin Developers, (2014(4) Mh.L.J. 391)*, wherein, it is held that injunction can be granted only in exceptional and compelling cases covering extreme hardship and injustice. In the given case, the defendants are put in possession in the year 2008 i.e. for a long period and no relief was sought immediately by these plaintiffs. Therefore, relief of temporary injunction is liable to be rejected.

10] Further I would also like to place reliance on the judgment in the case of *Smt. Rekha Narayan Marotkar and Ors. V/s. Rambhau Badhu Khadgi and Ors., (AIR 2007 Bombay 135)*, wherein it is held that plaintiff who is negligent and who had slept over his right is not entitled for equitable relief under section XXXIX, Rule 1 and 2 of CPC.

11] The ratio laid down by Hon'ble Bombay High Court are squarely applicable in the present case. I am saying so because the present plaintiff, who was well aware about the dispute in between his predecessor and the defendant, kept mum for last 7 years without any sufficient reason. Moreover, the additional dispute which is raised by the plaintiff about the recent construction of gallery in first floor cannot go hand in hand with the earlier dispute which has been already decided in favour of the defendant. Had it been a suit or application for the recent construction of defendant only then the position would have been different. What emerges from this factual position is that, vague attempt has been made on the part of plaintiff

by filing present suit to seek equitable relief against defendant about the earlier dispute which is already rejected by this court alongwith dispute of new construction. However, it is very hard to digest that the plaintiff though being advocate having knowledge about the earlier disputes in between his predecessor and the defendant remained silent for almost 7 years and allowed defendant to use the door opening the suit property as well as to flow the drainage water in his property. This very conduct is suspicious and clearly nullify the case of the plaintiff put forth. Apart from it, there is no whisper in the application or plaint as to why the defendant has no right to keep gallery facing towards the suit property. There is also no document on record to show that, the defendant has opened gallery illegally without leaving any space towards that side in contravention of rules. Therefore, I have no hesitation to hold that, plaintiff failed to show prima facie that the act complained of is in violation of his right or there is a fair and substantial question to be decided between him and defendant and that there is a bonafide dispute between them. Thus, I am not inclined to discuss the other points advanced by the parties during their arguments.

12] To sum up, in view of the aforesaid reasons, I am of the considered view that the plaintiff has miserably failed to establish prima facie case. He has also failed to show that balance of convenience lies in his favour and he will suffer any irreparable loss or injury.

13] Thus, in view of the aforesaid reasons, the plaintiff is not entitled for the temporary injunction. In the result, I answer point no. 1 and 2 in negative and point no. 3 in favour of the defendant and

pass the following order to answer point no.4.

ORDER

1. The application (Exh.5) seeking temporary injunction is rejected.
2. In the facts and circumstances of the case, no order as to costs.

Tasgaon
Date : 22.02.2023

Sd/....
(D. A. Darveshi)
2nd Joint Civil Judge J. D.,
Tasgaon.

